

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES,
INC.,

Plaintiff,

vs.

SAP AMERICA, INC., SAP AG,
LSI-LOWERY SYSTEMS, INC.,
THE IBIS GROUP, INC.,

Defendants.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

No. 1:08-cv-02755

The videotaped deposition of DALE Van LEEUWEN
taken before April M. Metzler, Certified Shorthand
Reporter and Certified Realtime Reporter, at 191 North
Wacker Drive, Suite 3700, Chicago, Illinois, commencing
at 8:49 a.m. on the 18th day of July, A.D., 2012.

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1 A. Okay.

2 Q. I want to talk a little bit about the
3 relationship between IBiS, LSi, and SAP.

4 A. Okay.

5 Q. LSi and IBiS were what's referred to as a
6 channel partner. Is that a correct term?

7 A. Yes.

8 Q. When did IBiS become an SAP channel partner?

9 A. I'm going to have to say early summer 2004,
10 without having an exact date.

11 Q. Can you explain or summarize how the channel
12 partner system, with respect to SAP, worked from your
13 perspective?

14 A. Yeah. There is a -- there's an annual fee
15 associated with the access to PartnerEdge, so you sign
16 up for becoming a partner. You have qualifications that
17 have to be met as far as competency from a sales
18 perspective, from a technical perspective. There's
19 training that's available to you as a result of paying
20 that initial PartnerEdge fee. Marketing material
21 becomes available to you, access to the internal portal
22 for partners, based on the product that you are licensed
23 to sell, becomes available to you.

24 Technical resources you get -- I believe you
25 get a -- you certainly get the SDK, the software

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1 development kit, available to you, and, I believe, we
2 had an internal development system that was available to
3 us. I can't remember that for sure, but I believe that
4 was the case.

5 Q. Well, were your -- was your firm encouraged by
6 SAP to hold itself out as a partner of SAP?

7 MR. STAR: Objection to form.

8 BY THE WITNESS:

9 A. I don't understand the question.

10 Q. Were you encouraged -- well, let me ask a
11 better question.

12 Was your firm encouraged to leverage its
13 partnership with SAP as part of the sales cycle of
14 Business One to prospective customers?

15 MR. STAR: Objection to form.

16 BY THE WITNESS:

17 A. Yes. We were expected to leverage our
18 relationship and sell SAP product, and that was
19 certainly our intent to do that.

20 Q. Did you have anyone at SAP that you were
21 expected to report to?

22 A. My -- my immediate contact at SAP was Ken
23 Lorenz at the time. He was my sales manager
24 (indicating). Chris Robinson was our onboarding
25 contact. Dan Kraus -- again, this channel was very,

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1 knowledge, with SAP, it's based on what is being booked
2 at the time, so it would be based on these users. It
3 wasn't anticipated future sales.

4 Q. Did you attend any seminars or meetings held
5 by SAP with respect to the Business One software?

6 A. Yes.

7 Q. I hand you what's been previously marked as
8 Exhibit 33.

9 A. Okay.

10 Q. Do you recognize that document?

11 MR. STAR: What is 33? I don't have my exhibits
12 here.

13 MR. LAMBERT: It's just the notes of that 2004
14 kickoff meeting.

15 MR. HULME: The Vegas trip.

16 BY THE WITNESS:

17 A. Yes, yes, I attended this.

18 MR. STAR: Okay.

19 BY MR. LAMBERT:

20 Q. Does Exhibit 33 reflect your notes from that
21 meeting?

22 A. (Reviewing exhibit.)

23 MR. HULME: Can you identify those as your notes?

24 THE WITNESS: Pardon me?

25 MR. HULME: He said do they reflect your notes.

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1 That was kind of -- objection to form.

2 MR. STAR: And restate the question for him.

3 (Laughter.)

4 BY MR. LAMBERT:

5 Q. Can you identify Exhibit 33 as notes that you
6 took at the 2004 SAP North American field kickoff
7 meeting?

8 A. (Reviewing exhibit.)

9 Yes.

10 Q. There's a statement -- there's twelve points
11 reflected in this document; is that correct?

12 A. Correct.

13 Q. Did you take these notes contemporaneous with
14 the discussion, or was this an after-the-fact reflection
15 of what was discussed at the meeting?

16 A. I took notes throughout the -- throughout the
17 field kickoff meeting, the FKOM meeting, and this was a
18 summation of that. It was taking my handwritten notes
19 and bringing them altogether and communicating to the
20 team the results of having attended the meeting.

21 Q. Okay. So you took notes contemporaneous with
22 the presentations that were given at the meeting?

23 A. That's correct.

24 Q. And then --

25 A. Transcribed --

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1 Q. -- translated those notes into the summary,
2 which is reflected on Exhibit 33; is that correct?

3 A. That's correct.

4 Q. Do these notes accurately reflect what was
5 discussed at the 2004 field kickoff meeting, in your
6 opinion?

7 A. I would -- I would have to say yes. I mean,
8 they were -- they were done -- if I remember correct,
9 they were done on the flight back from Las Vegas, where
10 I took my handwritten notes and typed them up and
11 immediately made them available to the team.

12 Q. Do you still have your handwritten notes from
13 the meeting?

14 A. No, no, no.

15 Q. There's a reference under -- under paragraph 1
16 about sessions from very high-level speakers to
17 one-to-one sales workbook sessions on how to sell. Do
18 you see that?

19 A. Mm-hmm (nodding).

20 Q. Do you recall any of the sessions that were
21 given on -- with respect to how to sell?

22 A. No, I don't. I really don't. I don't -- SAP
23 is a selling methodology. It could very well have been
24 associated with that. It could have been product
25 specific. I do not remember that.

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1 Q. Under item 4-A, there's a sentence that is
2 circled and starred. There's no upper size limit,
3 however, for whom the B1 partners can sell to.

4 A. Correct.

5 Q. What is meant by that statement?

6 A. For the different products that SAP has -- and
7 this has evolved and changed over time, and I'll just
8 give you an example. I don't know what they were at
9 this time, other than what I have documented here, but,
10 you know, Business All-In-One, which is the next version
11 up, a partner could only sell into a company that was
12 under \$500 million. Over \$500 million SAP would sell to
13 the account direct. We were not able to sell as a
14 partner at the time.

15 Just based on what I have noted here, there
16 was no -- nothing distinguishing or limiting a Business
17 One partner from selling into any account. And part of
18 that would have included the fact that the strategy
19 associated with Business One was not to just sell to
20 independent companies, but to also sell to subsidiaries
21 of much larger organizations. Okay. So I might have a
22 multi-national, multi-billion-dollar organization with a
23 subsidiary, and as partner I could sell into that
24 particular account.

25 Q. So is it your recollection that the statement

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1 in paragraph 4-A did not concern the user -- the user
2 environment into which the product would be sold? In
3 other words, numbers of users, and transaction volume,
4 and things of that nature.

5 A. I don't think that there's a direct
6 relationship as much as you could certainly -- you could
7 certainly say that, you know, subsidiaries of larger
8 organizations are going to have significant user counts
9 and so forth. And there was -- there was no -- there
10 was nothing governing us saying, you know, Listen, sell
11 up into this range or anything like that. It was -- it
12 was wide open. We were able to sell into any company
13 size. There was no limit put to that.

14 Q. After you left or resigned your position from
15 LSi, were you available to anyone for consultation with
16 respect to the Hodell-Natco project?

17 A. Yeah. I made myself available to -- to people
18 at LSi-IBiS. I did not make myself necessarily
19 available to -- to customers. I was not able to do
20 that. I was limited from doing that.

21 Q. Do you recall the status of the Hodell-Natco
22 project and implementation of SAP Business One and
23 InFlight at the time you resigned from LSi?

24 A. It was still -- the implementation hadn't
25 started. The product was still very much in

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1 A. Because they were past that already as far as
2 the number of users.

3 Q. Is it your testimony that IBiS was an actual
4 SAP channel partner or reseller?

5 A. I believe -- again, the timing was so close
6 that I believe IBiS held its own partnership with SAP
7 for maybe some window of time, a couple weeks, before
8 the -- before the relationship with LSi took place. It
9 may or may not have been. I mean, I really -- and,
10 again, I don't mean to sound vague or -- or -- if you
11 knew some of the stuff I was going through at that point
12 in time -- I had back surgery. My son was born with
13 cerebral palsy. I was going through cancer. I mean --
14 following that, I went through a divorce. It was a
15 horrible, horrible time.

16 Q. I understand.

17 A. And so I apologize.

18 Q. Well, there's no need for to you apologize.
19 Those are none of those --

20 MR. HULME: Why did you let all those things
21 happen?

22 THE WITNESS: They distracted me a little.

23 BY MR. STAR:

24 Q. None of those are good things, of course.

25 A. I do understand. You're trying to discover

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1 Q. Does that refresh your recollection as to
2 whether, in fact, The IBiS Group as of April of 2004 was
3 actually an SAP reseller?

4 A. It doesn't. It doesn't jog my memory. I
5 don't know.

6 Q. When you were making -- strike that.
7 This'll be 297.

8 (Exhibit No. 297 marked as
9 requested.)

10 BY THE WITNESS:

11 A. The only reason I mentioned that I'm almost
12 100 percent sure that there was a separate agreement for
13 IBiS is the note that is on here for LSi, just kind of
14 jogged my memory. And that was: SAP is aware that LSi
15 currently has a relationship with Aperum, Inc., a
16 software company products of -- for distribution
17 industry. This was a big issue -- I had mentioned
18 previously that I was a president of the ASPA, which was
19 the Aperum Solution Partners Association, and there was
20 a lot of concern in regards to partners taking on a
21 competitive line. And I was pointed at as having --
22 having issue being president of the ASPA and having a
23 competitive line.

24 BY MR. STAR:

25 Q. You're looking at page 27 of the reseller

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1 agreement between SAP and LSi?

2 A. Yes. And that just jogged my memory.

3 That's -- that's all.

4 Of that condition taking place as related to
5 IBiS.

6 Q. So as we sit here right now, is it your belief
7 that as of April 2004, for instance, IBiS Group -- The
8 IBiS Group itself, separate and apart from LSi, was an
9 actual reseller --

10 A. Reseller.

11 Q. -- of Business One?

12 A. Yes. We -- yeah. I'm pretty sure that we had
13 signed a reseller agreement before LSi did.

14 Q. And so when you were out saying things to Otto
15 Reidl, for instance, about the number of users that
16 Business One was appropriate for, you were doing that on
17 behalf of The IBiS Group, weren't you?

18 MR. HULME: Objection, foundation.

19 BY THE WITNESS:

20 A. I don't remember when that conversation took
21 place in relation to that.

22 Q. You were the president, the sole owner of The
23 IBiS Group?

24 A. I don't know that.

25 Q. Do you --

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1 MR. STAR: Objection, objection, no form.

2 BY MR. LAMBERT:

3 Q. When you -- when LSi and SAP were -- or when
4 LSi and IBiS were referring to SAP as their business
5 partner, that was a different connotation when LSi and
6 IBiS are referring to Hodell as their business partner?

7 MR. STAR: Objection.

8 BY MR. LAMBERT:

9 Q. Is that fair?

10 A. That is fair.

11 Q. For example, LSi and IBiS were licensed to
12 sell SAP products, correct?

13 MR. STAR: Objection to form.

14 BY THE WITNESS:

15 A. That is correct.

16 Q. Well, more accurately, LSi and IBiS were
17 licensed to sell SAP Business One; is that fair?

18 MR. STAR: Objection to form, assumes facts.

19 BY THE WITNESS:

20 A. Yes.

21 MR. LAMBERT: Is there a way I can correct that? I
22 mean, what fact can I assume?

23 MR. STAR: Go ahead. I'll ask him some more
24 questions.

25 MR. LAMBERT: Okay.

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1 BY MR. LAMBERT:

2 Q. LSi --

3 MR. STAR: I'll tell you, just so we can clear it
4 up. You're assuming that IBiS was licensed to sell the
5 software, and it's actually not true.

6 MR. LAMBERT: Okay.

7 MR. STAR: Unless there's some other document that
8 none of us has seen.

9 BY MR. LAMBERT:

10 Q. LSi was licensed to sell SAP Business One, to
11 the best of your knowledge, correct?

12 A. That's correct.

13 Q. Okay.

14 A. And wasn't -- isn't 32 showing that IBiS also
15 had the ability to sell?

16 MR. HULME: Well, unless you want to read the whole
17 thing, I would not represent what's in those papers.

18 BY MR. LAMBERT:

19 Q. At least to some -- well, do you want to
20 review that before you finish your answer?

21 A. (Reviewing exhibit.)

22 Yeah, you're correct, so this really pertains
23 to the software development kit.

24 I find it very hard to believe that SAP would
25 have entered into strictly a software development kit

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1 license with us without having the ability to sell the
2 product.

3 Q. To your knowledge, LSi -- or yeah -- LSi and
4 IBiS were authorized to use SAP's logo on their
5 letterhead and other marketing documents?

6 A. To my knowledge, yes.

7 MR. STAR: Objection to form.

8 BY MR. LAMBERT:

9 Q. Greg asked you some questions about your
10 specific recollection about a conversation with Dan
11 Kraus in which you came to an understanding that SAP
12 Business One could support up to 500 users. Do you
13 recall that questioning?

14 A. Yes.

15 Q. And he -- and -- and the two of you were
16 focusing on, Well, who said -- who specifically said 500
17 users. Did 500 users come out of Dan Kraus' mouth, or
18 did that come out of Dan Lowery's mouth?

19 A. Right.

20 Q. Do you recall that question?

21 A. I do remember, yes.

22 Q. And your figure [sic] was an open
23 conversation. What did you mean by that?

24 A. Meaning that we had a dialog that spoke to the
25 number of users that SAP was capable of operating, and

1 UNITED STATES OF AMERICA)
2 NORTHERN DISTRICT OF OHIO)
3 EASTERN DIVISION) SS.

4 STATE OF ILLINOIS)
5 COUNTY OF COOK)

6 I, April M. Metzler, Certified Shorthand
7 Reporter and Certified Realtime Reporter, do hereby
8 certify that DALE Van LEEUWEN was first duly sworn by me
9 to testify to the whole truth and that the above
10 videotaped deposition was reported stenographically by
11 me and reduced to typewriting under my personal
12 direction.

13 I further certify that the said videotaped
14 deposition was taken at the time and place specified and
15 that the taking of said deposition commenced on the 18th
16 day of July, A.D., 2012, at 8:49 a.m.

17 I further certify that I am not a relative or
18 employee or attorney or counsel of any of the parties,
19 nor a relative or employee of such attorney or counsel,
20 nor financially interested directly or indirectly in
21 this action.

1 Witness my official signature, this 26th day
2 of July, A.D., 2012.

3 *April Metzler*
4 *-BR*

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